

HONORABLE RICHARD A. JONES

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JENNIFER HARBERS, for Herself, as a Private
Attorney General, and/or On Behalf Of All
Others Similarly Situated,

Plaintiff,

v.

EDDIE BAUER LLC, and DOES 1-20, inclusive,

Defendants.

Case No. 2:19-cv-01012-RAJ

REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF MOTION TO COMPEL
ARBITRATION, OR IN THE
ALTERNATIVE, TO DISMISS
PLAINTIFF'S COMPLAINT

REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
MOTION TO COMPEL ARBITRATION, OR IN THE
ALTERNATIVE, TO DISMISS PLAINTIFF'S
COMPLAINT
Case No. 2:19-cv-01012-RAJ

SEED INTELLECTUAL PROPERTY LAW GROUP LLP
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(206) 622-4900

1 **TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE** that Defendant Eddie Bauer LLC hereby requests that this
3 Court take judicial notice of the following facts and documents:

4 **Exhibit A:** A screenshot from the Internet Archive showing
5 eddiebauer.com's Terms of Use on May 12, 2016. Available at
6 <https://web.archive.org/web/20160512142709/http://www.eddiebauer.com:80/company-info/company-info-terms-of-use.jsp>.

7 **Exhibit B:** *People of California v. J.C. Penney Corp.*, Case No.
8 BC643036, slip op. (Cal. Sup. Ct., Sept. 6, 2017).

9 Under Federal Rules of Evidence Rule 201, a fact is judicially noticeable when it is
10 capable of accurate and ready determination by resort to sources whose accuracy cannot
11 reasonably be questioned. F.R.E. 201. Exhibits A and B are both subject to judicial notice on
12 these grounds, and for the additional reasons set forth herein.

13 **1. Wayback Machine**

14 Exhibit A is a screenshot are taken from the Wayback Machine, a digital archive of the
15 World Wide Web and other information on the Internet created by the Internet Archive, a
16 nonprofit organization based in San Francisco, California. Courts have taken judicial notice of the
17 contents of web pages available through internet archives, including the Wayback Machine, as
18 facts that can be accurately and readily determined from sources whose accuracy cannot
19 reasonably be questioned. *See, e.g., Juniper Networks, Inc. v. Shipley*, 394 F. App'x 713 *1 (Fed.
20 Cir. 2010); *Erickson v. Nebraska Machinery Co.*, 2015 WL 4089849, *1 n.1 (N.D. Cal. July 6,
21 2015); *Pond Guy, Inc. v. Aquascape Designs, Inc.*, 2014 WL 2863871 *4 (E.D. Mich. June 24,
22 2014); *In re Methyl Tertiary Butyl Ether (MTBE) Prods. Liab. Litig.*, 2013 WL 6869410 *4 n.65
23 (S.D.N.Y. Dec. 30, 2013), *vacated in part on other bases* by 2015 WL 9777725 (S.D.N.Y. Dec. 7,
24 2015); *Marten Transp., Ltd. v. Plattform Advert., Inc.*, No. 14-2464-JWL, 2016 WL 1718862 *4

(D. Kan. Apr. 29, 2016).

2. *California Superior Court Decision*

Exhibit B is a decision by the Superior Court of California in *People of California v. J.C. Penney Corp.*, Case No. BC643036, slip op. (Cal. Sup. Ct., Sept. 6, 2017). Courts regularly take judicial notice of filings from other proceedings, where those filings are relevant to the issues in a case. *See, e.g., United States ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992) (Courts “may take notice of proceedings in other courts, both within and without the federal judicial system, if those proceedings have a direct relation to matters at issue.”); *see also Burbank-Glendale-Pasadena Airport Auth. v. City of Burbank*, 136 F.3d 1360, 1364 (9th Cir. 1998) (the court may take judicial notice of court filings and other matters of public record). Here, the decision attached as Exhibit B is directly relevant to the issues in this case, as it involved deceptive pricing claims similar to Plaintiff’s.

II. CONCLUSION

Eddie Bauer respectfully requests that its Request for Judicial Notice be granted.

Respectfully submitted this 3rd day of July, 2019,

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CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of July 2019, I caused to be electronically filed the foregoing REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO COMPEL ARBITRATION, OR IN THE ALTERNATIVE, TO DISMISS PLAINTIFF'S COMPLAINT with the Clerk of Court using the CM/ECF system, which will send electronic notification of such filing to the following counsel of record:

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